IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7866 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BABUBHAI RAMABHAI PATEL

Appearance:

Mr.Premal Joshi, A.G.P. for Petitioners

MR PR THAKKAR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 13/11/2000

ORAL JUDGEMENT

1. The order of the Gujarat Revenue Tribunal passed on 21.8.1999 is under challenge in this writ petition. Counter Affidavit has been filed by the respondent. Shri Premal Joshi, learned A.G.P. for the petitioner and Shri

P.R.Thakkar, learned Counsel for the respondent have been heard on admission of this petition. With their consent this petition can be finally disposed of at the admission stage.

2. Brief facts are that the entry No.1623 relating to Survey No.333 measuring 28 Gunthas was under challenge through notice u/s.84-C of the Bombay Tenancy Act. Inquiry was held by the Mamlatdar and A.L.T., Vadodara. Ultimately, he found that since it was a case of inheritance of land under a will the provisions of Section 43 or Section 63 did not apply and there was no violation of the aforesaid provisions. Consequently the notice u/s.84-C was withdrawn. The Deputy Collector (LR), Vadodara exercised suo-motu powers of revision u/s.76-A of the Act and after setting aside the order dated 6.1.1990 of the Mamlatdar and ALT, remanded the matter for considering certain points through his order dated 16.9.1990. Briefly stated those points are whether the applicant is an agriculturist or not, whether he is direct heir of the executor or not and whether he holds the land within 8 kms. radius or not, etc. Feeling aggrieved a revision Application was filed against this order which was allowed by the Tribunal and the order of the Deputy Collector in suo-motu revision was set aside.

3. Learned A.G.P. Shri Premal Joshi has contended that the order of remand was illegally set aside by the Tribunal inasmuch as in the remand order only direction was for ascertaining the existence of will inasmuch as the copy of will was not filed during inquiry and also for ascertaining whether the applicant held the land within 8 kms. radius or not and also whether the applicant is an agriculturist or not, as such the order of the Tribunal is illegal.

4. The Tribunal has set aside the order passed by the Deputy Collector mainly on three grounds. The first ground is of jurisdiction. The Tribunal has observed that the Deputy Collector had no jurisdiction to set aside the order of the Mamlatdar. The ground of jurisdiction, according to the impugned order, is inter-linked with the plea of limitation. The Tribunal found that for the first time after lapse of 5 years the Deputy Collector summoned the record and exercised suo-motu revisional powers which he was not competent to do u/s. 76-A of the Act. The Tribunal has mentioned the proviso to Section 76-A and has also relied upon a Division Bench pronouncement of this Court in Thakorbhai Tribhovandas Rao & ors. v/s. State of Gujarat, reported in 1995 (1) G.L.H. 758 and observed that beyond the

period of one year the Deputy Collector had no suo-motu revisional power either to call for the record or to issue notice or to quash the impugned order of the Mamlatdar before him. The next ground for setting aside the order of the Deputy Collector by the Tribunal was that since the land was inherited under a will the provisions of Will are not applicable to Sections 43 and 63 of the Act, hence also the order of the Deputy Collector is illegal.

5. The Division Bench of this Court in Thakorbhai's case (supra) has categorically laid down that where no record was called for by the Deputy Collector after expiry of one year from the date of the order passed by the Mamlatdar or the Tribunal for the purpose of satisfying himself as to the legality or propriety of such order as to the regularity of the proceedings of the Mamlatdar or Tribunal, the proviso to Section 76-A would be applicable even in a case where a reference is made by the State Government requiring the Collector to call for the record and proceedings for satisfying himself as to the legality or propriety of the order. The limitation prescribed by the proviso for the exercise of the revisional powers beyond the expiry of one year from the date of order is clear and explicit and the Collector will have no revisional power to be exercised beyond the period of one year. This Authority of the Division Bench of this Court is binding upon me as well. Leaving aside the history of litigation that first action was taken by issuing notice u/s.84-C after a period of 15 years of recording the entry and that proceeding ultimately terminated in favour of the respondent, the Dy. Collector after expiry of further period of five years exercised suo-motu revisional power and issued notice acting upon the provision of Section 76-A of the Act. As pointed out by the Division Bench neither suo-motu powers by the Deputy Collector or the Collector nor the powers by the above Authority on reference made by the State Government could be exercised beyond the period of one year from the date of the impugned order. The order of the Mamlatdar was dated 16.1.1990. It was taken in suo-motu revision in the year 1994 and the record was summoned by the Dy. Collector some where in the year 1995. As such suo-motu action in revision taken by the Dy. Collector was patently barred by limitation and if his action was barred by limitation he acquired no jurisdiction to enter into the merits of the order passed by the Mamlatdar. This was sufficient for the Tribunal to set aside the order of the Deputy Collector. Thus, the order of the Deputy Collector could be set aside by the Tribunal on the ground of want of jurisdiction. The

Tribunal was thereafter not required to enter into the merits of the case. Even if it observed that the transfer by will requires no permission u/s. 43 and 63 of the Act, it has no significant consequence.

5. For the reasons stated above the order of the Tribunal dos not suffer from any illegality or infirmity. There is thus no merit in the petition which is hereby dismissed with no order as to costs.

sd/-

Date : November 13, 2000 (D. C. Srivastava, J.)

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